

New Currency Conversion Procedures in British Columbia and Manitoba

Under the old legislation in British Columbia and Manitoba, maintenance orders set in a foreign currency were converted for enforcement at the exchange rate in effect at the date the order was made or last varied. This provision is contained in the Interjurisdictional Support Orders Act (ISO Act) and is uniform across Canada. As a consequence, the exchange rate could not be updated, even where using an old exchange rate created significant discrepancies between the amount due under the order and the converted amount for enforcement. This resulted in significant differences between the amount owing in the original currency and the amount that could be enforced in British Columbia and Manitoba.

For example: \$100 US in 2004 = \$133 CND; \$100 US in 2011 = \$96 CND; \$100 US in 2013 = \$100 CND

Under new amendments in British Columbia and Manitoba, the Maintenance Enforcement Programs (MEPs) in these provinces may update the exchange rate on a periodic basis. These new procedures will help keep the arrears and accounts on cases in British Columbia and Manitoba much more aligned with those of the foreign jurisdiction. They should reduce the number of cases with foreign jurisdictions where one program believes the case is fully paid and the other shows arrears. It is important to note that the account statements for both jurisdictions will never be exactly the same: even though the British Columbia or Manitoba agency converts the due amount to an exact equivalent, the Canadian agency does not know the converted value of each payment in Canadian dollars sent to the foreign jurisdiction. However, the difference between the two accounts will be much smaller than it was prior to these amendments.

BRITISH COLUMBIA

New Legislation

Under the new amendment, introduced in September 2012, the MEP Director may update the exchange rate on a periodic basis. The new provision came into effect November 1, 2012. By policy, the MEP will adjust orders annually using the current exchange rate. The new provision applies to orders made in a foreign currency only.

Process

The initial exchange rate is set at the time the foreign order is first registered for enforcement, using the rate in effect on that date. Once the case is set up in the British Columbia Maintenance Enforcement Program (FMEP) system, an annual review date is set. On the annual review date, the enforcement officer determines the new amount based on the Bank of Canada exchange rate for noon of the previous day. The newly converted amount takes effect 30 days later so that the maintenance payor has time to adjust his/her payments. The process is automated. A feed from the Bank of Canada is integrated into the FMEP case management system so that the exchange rate is automatically inputted and the recalculation made. The required letters and forms auto-generate once the enforcement officer has reviewed and approved the recalculation.

Conversion of Existing Cases

The new legislation applies to all cases. Since November 2012, the FMEP has been converting all the old orders (expressed in foreign currency) to bring them up to current exchange rates. As a case comes up for review, the current support amount (ongoing maintenance) is adjusted. Where there are arrears, the FMEP will contact the issuing program and ask for an updated statement of arrears. The FMEP will then determine the Canadian dollar equivalent of the arrears that are on the books of the foreign responding jurisdiction and update the account to reflect that amount. The FMEP will not reconvert the

arrears regularly after that as the amount should remain fairly close to the foreign amount and certainly much closer than under the previous process. The FMEP will, however, do a further conversion of the arrears if there is a court hearing or the MEP is considering a lump sum payment of the full arrears. In that case, the FMEP will again ask for an updated statement and convert the arrears to the amount shown on the records of the foreign jurisdiction.

Legislation

Interjurisdictional Support Orders Act

(http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02029_01)

Section 39

Order or application not expressed in Canadian currency

39 (1) In this section:

"foreign support amount" means the amount of support referred to in a foreign support order;

"foreign support order" means an order or other document made in a reciprocating jurisdiction that refers to an amount of support that is not expressed in Canadian currency.

(2) If a foreign support order is received by a designated authority or a British Columbia court,

(a) the designated authority must convert the foreign support amount into Canadian currency in accordance with the regulations, and

(b) after that, the director or, if the foreign support order is not filed with the director, the designated authority, may, from time to time, revise the conversion into Canadian currency of the foreign support amount to reflect current conversion rates.

MANITOBA

New Regulation:

The change relating to the exchange rate to be used when converting a support order in foreign currency into Canadian currency for enforcement by the Manitoba MEP applies to foreign support orders received by Manitoba MEP to be registered on or after September 1, 2013.

The regulation says that the exchange rate to be used is the rate applicable on or near the date of registration. The phrase "on or near the date" provides some flexibility to MEP when doing a registration. For example, if the Registration Unit obtains the rate of exchange at 3:00 pm September 5, 2013, the actual registration with the Manitoba Court can be done within the next day or so.

Where a foreign support order registration package includes a statement of arrears, the same rate of exchange is to be applied to:

1. The ongoing amount of support;
2. The arrears stated in the statement of arrears;
3. Any amount that becomes due between the date of the statement of arrears and the registration date.

Process

For Initial Registrations on or after September 1, 2013, the MEP will certify the converted amount on the foreign support order. (There is no change to this procedure). If there are arrears, the MEP will certify the amount of arrears in Canadian dollars (2 + 3 above) that will be the amount used as the opening arrears balance. Finally, the MEP will set a date that will be the first "currency conversion review date" for the file (no sooner than one year after registration).

On the “currency conversion review date,” the ongoing amount is adjusted by applying the rate of exchange of a date that is “on or near the currency conversion review date.”

For example: If the foreign order is for \$500 per month US and was converted to \$498 CDN when it was initially registered in Manitoba, on the currency conversion review date, MEP will obtain a current rate of exchange to convert \$500 US. For example, this new converted amount might be \$502 CDN.

MEP records will be adjusted to show \$502 CDN per month as the new amount payable commencing “30 days after the applicable currency conversion review date.”

The arrears as of the currency conversion review date must also be adjusted by using the same rate of exchange. Again, the phrase is “on or near the currency conversion review date,” so ideally, the statement of arrears will be as of a date that is “on or near” this date.

Conversion of Existing Cases

For foreign order files already registered as of September 1, 2013, the MEP will set a “currency conversion review date” and request an updated statement of arrears from the foreign jurisdiction for a date as close as possible to the “currency conversion review date.”

A notice provision in the regulation specifies what must be included where applicable. Notice must be sent to parties (or reciprocating jurisdiction where applicable) after each currency conversion review adjustment is done.

Regulation

The Inter-jurisdictional Support Orders Regulation amendment:

<http://web2.gov.mb.ca/laws/regs/2013/097.pdf>

The regulation includes provisions that address certain other specific circumstances and provides some flexibility for MEP in cases that do not fit within the usual rules.